

WETLANDS COUNCIL

MINUTES

January 10, 2017

The Wetlands Council met on Tuesday, January 10, 2017 in Rooms 112, 113, 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Sheridan Brown, Carol Henderson, James Kennedy, Richard Mellor, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling and Bob Wolff

Absentees: Councilors: Deborah Lievens

Also present was: Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:00 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Councilor Snelling made a motion to approve the December 13, 2016 meeting minutes with a correction, second by Councilor Henderson. Motion passed unanimously.***

2. Public Input: None

3. Status of Appeals

Peter Demas, DES Legal Unit

I. New Appeals

Docket No. 16-14 WtC – Mark S. Panall Appeal

Subject: 8/9/16 Letter issued to Charles MacGlashing, Jr. regarding LRM File #2974

Hearing Officer: Not assigned

Status: September 1, 2016 received Petition for Appeal. November 21, 2016 issued Receipt of Appeal letter. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal. December 13, 2016 Council voted to issue ruling declining to accept Appeal as the Council has no jurisdiction. 12/19/16 issued ruling declining to accept Appeal.

Docket No.16-15 WtC – Kloppenburg-McCaffery Trust Appeal

Subject: 8/8/16 decision declining to act regarding complaint file #2016-01740

Hearing Officer: Not assigned.

Status: September 7, 2016 received Notice of Appeal. November 14, 2016 issued receipt of Appeal letter. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal. December 12, 2016 received Appearance of Daniel Mullen on behalf of Clearwater Cove Condominium Association. 12/13/16 Council voted to issue ruling declining to accept Appeal as the Council has no jurisdiction. 12/19/16 issued ruling declining to accept Appeal.

Docket No. 16-18 WtC – Harold Lyon, Jr., Trustee Appeal

Subject: 9/1/16 denial of after-the-fact request to replace and reconfigure dock, File #2014-02205

Hearing Officer: Not assigned

Status: September 30, 2016 received Notice of Appeal and Appearance for Regina Nadeau. October 24, 2016 issued insufficient Appeal letter. November 16, 2016 received refiled Appearance for Attorney Nadeau and Revised Petition for Appeal. 11/28/16 issued receipt of revised Appeal letter. Council to accept or decline Appeal at their January 10, 2017 meeting. 01/05/17 received cover letter, Appearance of Jason Reimers for abutters and a Petition to Intervene.

- ***Councilor Henderson made a motion to accept the Appeal, second by Councilor Snelling. Motion passed unanimously.***

Docket No. 16-20 WtC – Matthew and Katherine Lowrie, et al. Appeal

Subject: 9/12/16 approval of Wetlands Restoration Plan for McCarthy Subdivision, LRM file #2015-02245 (EMD3009)

Hearing Officer: Not assigned

Status: October 12, 2016 received Petition for Appeal and Appearance for Sherilyn Young. November 1, 2016 received Motion to Summarily Dismiss Petition. 11/14/16 issued receipt of Appeal letter. 11/14/16 received Objection to Motion to Summarily Dismiss. 11/17/16 received Appearance of Richard head. 11/23/16 received McCarthy's Reply to Appellants' Objection to Motion to Motion for Summary Dismissal. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal. December 13, 2016 the Council voted to table the appeal for their Attorney's opinion. Chairman Kimball has spoken with Counsel and it needs to be further reviewed so it will be pushed back another month. When looking at the material at this time, remember the appellant's expert report has not been accepted.

- ***Councilor Mellor made a motion to table the Appeal to February 14, 2017, second by Councilor Brown. Motion passed unanimously.***

Susan slack arrives at 9:07.

Docket No. 16-21 WtC – Frederick Ziegler, III Appeal

Subject: 9/22/16 Administrative Order No. 16-023 WD

Hearing Officer: Not assigned

Status: October 20, 2016 received Notice of Appeal. November 28, 2016 issued insufficient Appeal letter. December 28, 2016 received revised Notice of Appeal. January 3, 2017 issued receipt of revised appeal letter. Appeal appears to still be insufficient. Council to accept or decline appeal at their January 10, 2017 meeting.

- ***Councilor Wolff made a motion to deny the Appeal based on the failure to certify that Appellant sent documents to all required parties, second by Councilor Kennedy. Motion passed unanimously.***

II. Decisions that need to be written/finalized and issued.

Docket No. 15-12 WtC – N. Miles Cook III Appeal

Subject: 10/9/15 denial of permit application #2015-00960

Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 5, 2015 received Petition for Appeal. 11/9/15 issued receipt of Appeal letter. 11/20/15 received Appearance from Atty. Maloney for DES. Council to accept or dismiss at their February 9, 2016 meeting. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued notice of Pre-hearing Conference schedule for 3/28/16 at 9:30 a.m. 3/28/16 issued Pre-hearing Order scheduling hearing for June 14, 2016 at 9 a.m. May 13, 2016 received State's Witness and Exhibit List.

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5/13/16 received Appellant's Witness and Exhibit List. June 2, 2016 received motion to Continue Hearing. 6/8/16 issued letter granting Motion to Continue Hearing, rescheduling it for August 9, 2016 at 9 a.m. Hearing held August 9, 2016. Deliberations were held August 30, 2016. Appeal was denied on a 5-5 vote. December 2, 2016 issued draft Decision and Order to the Council for comments. 12/13/16 issued Decision and Order denying Petition for Appeal.

Docket No. 16-17 WtC Robert C. Brown Appeal

Subject: 8/19/16 permit #2009-01521

Hearing Officer: Not assigned

Status: September 19, 2016 received Petition for Appeal and Motion to Extend Time. November 21, 2016 issued receipt of Appeal letter. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal. December 13, 2016 Council voted to issue a ruling declining to accept Appeal as untimely filed. 12/12/16 received letter dated December 9, 2016 from Appellant. Council needs to issue ruling declining to accept Appeal. 12/29/16 received letter dated December 28, 2016 from Appellant.

Discussion was held to clarify the 30 days according to the statute and interpretation. Councilor St.Pierre is to send the 2013 Supreme Court ruling he found to Chairman Kimball. It was decided to have legal counsel review. He will also send the ruling to Council Clerk to be sent to the total Council.

III. Hearings or PHCs Pending

Docket No. 16-12 WtC – William M Ranney Appeal

Subject: 6/23/16 Approval of Shoreland Permit #2016-01071

Hearing Officer: 11/7/16 Requested Hearing Officer be assigned.

Status: July 5, 2016 received Request for Appeal. 7/14/16 issued Insufficient Appeal letter. 7/19/16 received Revised Appeal. 7/20/16 issued Receipt of Appeal letter. Council accepted the appeal September 13, 2016. 9/23/16 received Motion to Intervene from Permittee. November 7, 2016 issued Appeal accepted letter. A Motion to Intervene has been filed. November 7, 2016 issued Appeal accepted letter. December 2, 2016 Hearing Officer granted Motion to Intervene. 12/12/16 issued Notice of Pre-hearing Conference scheduled for January 23, 2017 at 9:30 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action. June 16, 2016 issued request for a status report of the pending appeal. 6/24/16 received appeal status update; still pursuing appeal.

Docket No. 14-13 WtC – Ergendino Perrone and Robert Gleason Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo. June 16, 2016 issued request for a

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status report of the pending appeal. 6/24/15 received appeal status update from Ergendino Perrone. July 8, 2016 received appeal status update from Robert Gleason.

Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay. June 16, 2016 issued request for a status report of the pending appeal. 6/28/16 received appeal status update.

V. Misc.

4. New Business

Election of Officers:

- ***Councilor Snelling made a motion to nominate Chairman Kimball as chairman and Councilor Brown as Vice Chair, second by Councilor Slack. Motion passed unanimously.***

Next month – Department Report and Annual Report.

5. Old Business

6. Next Meetings –

February 14, 2017 at 9:00 a.m.

7. Adjournment

- ***Councilor Brown made a motion to adjourn, second by Councilor Henderson. Motion passed unanimously.***

Meeting adjourned at 9:48 a.m.